

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MLB PLAYERS INC.

Plaintiff,

v.

**DRAFTKINGS, INC., f/k/a DK
CROWN HOLDINGS INC.,**

Defendant.

CIVIL ACTION

NO. 24-4884-KSM

**DEFENDANT DRAFTKINGS INC.’S MOTION TO CERTIFY ORDER FOR
INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(b)
AND FOR STAY PENDING ACCEPTANCE OF APPEAL**

Pursuant to 28 U.S.C. §1292(b), Defendant DraftKings Inc. (“DraftKings”) hereby moves to certify for interlocutory review the Court’s March 17, 2025 Order Granting in Part and Denying in Part DraftKings’ Motion to Dismiss (“Order”) (ECF No. 55), and to stay these proceedings pending resolution of DraftKings’ Motion.

WHEREFORE, for all the reasons set forth in the incorporated Memorandum of Law in support of this Motion, DraftKings requests that the Court certify for appeal the following questions for resolution:

- (1) Does DraftKings’ use of MLB player images as alleged in the Complaint fall within the scope of the exception under 42 Pa. Cons. Stat. § 8316(e)(2)(ii) for “news report or news presentation having public interest” and the coextensive Pennsylvania common law exception?
- (2) As a matter of law, must a cause of action for unjust enrichment in a right of publicity case be dismissed where there is no relationship between the parties?
- (3) Can a plaintiff purporting to represent a group of individuals circumvent the rules for class actions by bringing a claim under 42 Pa. Cons. Stat. § 8316(a) and Pennsylvania

common law, when both provide only that an individual can bring a claim for the unauthorized use of her or his name or likeness?

- (4) Can a sublicensee, rather than the individual allegedly affected, bring a claim for unauthorized use of name or likeness under 42 Pa. Cons. Stat § 8316(b)(4) and Pennsylvania common law?

WHEREFORE, for all the reasons set forth in the incorporated memorandum of law in support of this Motion, DraftKings requests that the Court stay these proceedings pending the Third Circuit's decision regarding this interlocutory appeal.

Dated: April 4, 2025

Respectfully submitted,

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ATTORNEYS FOR DRAFTKINGS INC.

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2025, a true and correct copy of the foregoing document was served on all counsel of record via the Court's ECF system.

/s/ Megan K. Bannigan

Megan K. Bannigan (*pro hac vice*)

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